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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,624	03/31/2004	Lutz Deckert	NHL-HOL-70	5418

7590 10/18/2005

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EXAMINER

DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/814,624	Applicant(s) DECKERT, LUTZ	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-13 and 30-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-13 and 30-34 is/are allowed.
- 6) ☒ Claim(s) 35-40 is/are rejected.
- 7) ☒ Claim(s) 41-44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 8/3/2005. These drawings are accepted.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerner et al (US 4,412,876) in view of Waterman (US 4,446,616).

In regard to claims 35-37, Lerner discloses the invention substantially as claimed including a mandrel 60, which opens a continuous tube of labels 11, roller 80 and 84 for advancing the tube, severing mechanism 66, sleeve adding arrangement comprised of first and second holding and releasing portion 272, for positioning the sleeve on the container 32 and releasing the sleeve around the container (see Figs. 1,3,4,7,8 and C3,L61 - C9,L11). What Lerner does not disclose is the explicit use of an adjustment mechanism, which adjusts the distance of the first and second holding portions. However, Waterman teaches that it is old and well known in the art to provide an adjustment mechanism for first and second holding portions 79 and 81, which is connected to adjustable brackets 86 and 87, and screws 88 and 89 which allow the user to adjust the horizontal distance between holding portions for the purpose of

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accommodating different sized bottles with different sized diameters (see Figs.1,10 and C2,L61 – C3,L2).

Furthermore, while Waterman is silent on the different sized diameters of the wrapping material, the examiner asserts that it is inherent in the teaching of Waterman as well as obvious that a different sized container, comprised of a different diameter, whether larger or smaller than a previous product line, would utilize a different sized diameter label.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Lerner with the adjustment mechanism as taught by Waterman for the purpose of accommodating different sized bottles with different sized diameters.

In regard to claims 38-40, the modified invention of Lerner discloses the invention substantially as claimed as applied to claims 35 and 36 except for the use of independently adjusting members. However, Waterman teaches that it is old and well known in the art to provide an adjustment mechanism, which are independently adjustable and comprised adjustable brackets, which also functions as a stop for screws 86 and 87, and screws 88 and 89 which allow the user to independently adjust the horizontal distance between holding portions for the purpose of accommodating different sized bottles with different sized diameters.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Lerner with the

adjustment mechanism as taught by Waterman for the purpose of accommodating different sized bottles with different sized diameters.

Allowable Subject Matter

4. Claims 10-13 and 30-34 are allowed.
5. Claims 41-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 35-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

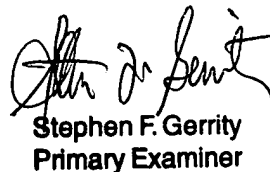
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action..

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
October 13, 2005



Stephen F. Gerrity
Primary Examiner